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IN THE SUPREME COURT

STATE OF ARIZONA

In the Matter of:)	Supreme Court No. R-17-0002
)	
PETITION TO AMEND THE)	COMMENT OF THE PHOENIX
ARIZONA RULES OF CRIMINAL)	CITY PROSECUTOR'S OFFICE
PROCEDURE)	
_____)	

I. Introduction

The Arizona Rules of Criminal Procedure (“Rules”) were promulgated in 1973. Although the Rules have been amended over time, the Arizona Supreme Court determined that a comprehensive review of the current Rules would be beneficial.¹ The Court therefore ordered the establishment of the Task Force on the Arizona Rules of Criminal Procedure (“Task Force”).²

The express purpose of the Task Force was to:

Review the Arizona Rules of Criminal Procedure to identify possible changes to conform to modern usage and to clarify and simplify language. These changes should promote the just resolution of cases without unnecessary delay or complexity.

¹ Supreme Court Administrative Order No. 2015-123.

² *Id.*

After an extensive redrafting process, the Task Force petitioned the Court to amend the Rules. Because the proposed changes were so vast, the Task Force understandably submitted a proposal in the form of a complete re-write of the Rules instead of a redline version. The Petition to amend the Rules is currently undergoing an initial public-comment period.

The Phoenix City Prosecutor's Office has reviewed the proposed Rules. Although a number of important changes were identified, many have been addressed by the Arizona Prosecuting Attorneys' Advisory Council or other agencies. The purpose of this Response is to address important changes that may have not yet been identified.

II. Mitigation Specialist under Rule 6.7(a)

The Task force made substantial changes to Rule 6. For example, provisions of current Rule 15.9(a) were moved and consolidated with proposed Rule 6.7(a). The current version of Rule 15.9(a) reads as follows:

Application for Appointment.

An indigent defendant may apply for the appointment of an investigator and expert witness, *and in a capital case an indigent defendant may also apply for the appointment of a mitigation specialist*, to be paid at county expense if the defendant can show that such assistance is reasonably necessary to present a defense adequately at trial or sentencing.³

...

³ Emphasis added.

Under the current Rule 15.9(a), defendant’s therefore only have the right to apply for mitigation specialists in capital cases.

However, proposed Rule 6.7(a) seems to give indigent defendants a new procedural right to apply for mitigation specialists in both capital *and non-capital cases*. Proposed Rule 6.7(a) states:

Appointment of Investigators and Expert Witnesses for Indigent Defendants

- (a) Appointment. On application, if the court finds that such assistance is reasonably necessary to adequately present a defense at trial or at sentencing, the court may appoint an investigator, expert witnesses, *and/or mitigation specialist* for an indigent defendant at county or *city expense*.⁴

Because the Task Force’s “Rule-by-Rule Analysis” set forth in Appendix B to the Petition does not purport to create a new procedural right to mitigation specialists for defendants in non-capital cases, the City of Phoenix requests clarification from the Task Force whether the appearance of this new right in proposed Rule 6.7(a) is a drafting error. Giving defendants the right to mitigation specialists in non-capital cases—or in any cases heard in limited-jurisdiction courts—would clearly but unnecessarily burden the budgets of state and local jurisdictions.

...

...

⁴ Emphasis added.

Assuming the proposed Rule 6.7(a) contains an unintended drafting error, the City proposes the following revision to the proposed Rule 6.7(a) to clarify when courts may appropriately appoint mitigation specialists:

Appointment of Investigators and Expert Witnesses for Indigent Defendants

- (a) Appointment. On application, if the court finds that such assistance is reasonably necessary to adequately present a defense at trial or at sentencing, the court may appoint an investigator or expert witnesses for an indigent defendant at county or city expense. *On application in a capital case, the court may appoint a mitigation specialist.*⁵

III. Order and Notice of Discharge under Rule 27.5

The proposed rule combines separate sections for superior and limited-jurisdiction courts. The final sentence of the proposed Rule states:

Upon probationer's request, the court must furnish the probationer with a certified copy of the discharge order in superior court *and* of the early termination order in a limited jurisdiction court.⁶

It appears that Superior Court generates an order of discharge upon expiration or early termination of probation whereas limited-jurisdiction courts generate an order only when there is early termination of probation. The new rule is perhaps less clear on this distinction. The City recommends that the Task Force replace the *and* in the final sentence of proposed Rule 27.5 with an *or*.

⁵ Emphasis added.

⁶ Emphasis added.

IV. Initial Appearance after arrest under Rule 27.7(c)

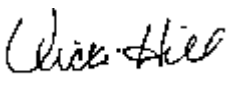
To ensure consistency with the current rule, the proposed version of 27.7(c) should add a reference to Rule 7.2(c) at the end of the sentence.

V. Conclusion

In conclusion, the Phoenix City Prosecutor's Office recommends that the Task Force clarify whether it intended to create a new procedural right to mitigation specialists for defendants in all non-capital cases whether involving felonies or misdemeanors. The Phoenix City Prosecutor's Office also recommends that the *and* in the final sentence of proposed Rule 27.5 be replaced with an *or*. Finally, the Task Force should include a reference to Rule 7.2(c) at the end of Rule 27.7(c).

RESPECTFULLY SUBMITTED this 14th day of March, 2017.

PHOENIX CITY PROSECUTOR

By: 

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this 14th day of March, 2017

by: CVarela